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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

CHARLES BELAND,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I.

Summary Statement of Matters Involved

This is the second petition for certiorari involving petitioner, the first having been denied, 313 U. S. 585. In the Circuit Court the case was No. 9601, and is reported in 117 Fed. (2d) 958. Upon the denial of certiorari by this Honorable Court (313 U. S. 585) the mandate of the Circuit Court issued, directing the trial court to resentence petitioner *in accordance with the opinion of the Circuit Court.* (R. 22-23.)

After the mandate of the Circuit Court had issued, and on November 10, 1941, three days after the peti-

tioner had surrendered to the United States Marshal for the Northern District of Texas, at Fort Worth, for the purpose of entering upon the service of such legal sentence that the Court might impose *in accordance with the opinion of the Circuit Court* and its mandate, and prior to being sentenced, the United States Attorney for the Northern District of Texas filed an information under 26 U. S. C. A., Section 2557(b) (7), setting forth that on two previous occasions petitioner had been convicted of selling morphine, a derivative of opium, in violation of the narcotic laws of the United States. (R. 18-22.)

Thereafter, on the 11th day of November, 1941, the trial court sentenced petitioner to serve a term of imprisonment of seven (7) years in an institution of the penitentiary type to be designated by the Attorney General of the United States. (R. 24-26.)

Be it noted at this point, that petitioner, by counsel, agreed to a stipulation as per the following:

> "It is stipulated and agreed that the defendant Charles Beland was indicted herein, together with others, in forty-one substantive offenses against the Narcotic laws of the United States and in one count (being the forty-second count of the indictment) with conspiracy to violate such laws and that on July 18, 1940, he was found guilty and convicted on counts sixteen, eighteen, and forty-two of the indictment and thereupon sentenced by the Court to serve a term of five years imprisonment generally, on count sixteen and forty-two of the indictment and in addition thereto, that he serve ten years imprisonment on count eighteen

of the indictment, said latter sentence being suspended.

"It is further stipulated that thereafter the defendant appealed said judgment and sentence to the United States Circuit Court of Appeals for the Fifth Circuit and on the 27th day of February, 1941, said Circuit Court of Appeals entered its judgment reversing this Court as to the conviction on counts sixteen and eighteen of the indictment and affirmed the conviction as to the forty-second count of the indictment. Petition for rehearing was filed on March 19, 1941, and the same was denied on March 20, 1941. Petition for writ of certiorari was thereafter duly filed in the Supreme Court of the United States and denied.

"It is further stipulated that said defendant surrender himself into the custody of the United States Marshal for the Northern District of Texas at Fort Worth, on the 7th day of November, 1941, and has since remained in such custody.

"That on the 10th day of November, 1941, the United States of America, by and through its United States Attorney for the Northern District of Texas, filed an information herein referring to certain prior offenses and convictions of the defendant, he admits the allegations contained therein. It is further stipulated that no information with reference to the prior offenses or convictions of the said defendant was filed herein prior to the one aforesaid and that at the time of his original conviction herein and sentence no such information as aforesaid had been filed or was pending." (R. 16-17.)

And further be it noted, that the said criminal information filed by the United States Attorney showed petitioner had been convicted twice for violation of the narcotic laws, first, on the 29th day of November, 1926, and secondly, on the 9th day of January, 1935. (R. 18-22.)

Petitioner respectfully shows that the trial court totally ignored the mandate of the Circuit Court, did not sentence petitioner *in accordance with the opinion of the Circuit Court*, but did impose a judgment and sentence solely upon the criminal information filed by the United States Attorney under Section 2557(b)(5)(6)(7), otherwise known as an "Habitual Criminal Act." (R. 26.)

Notice of appeal under Rule III (5th Circuit Court) was duly given and filed on the 13th day of November, 1941 (R. 27), and the grounds of appeal therein set forth (R. 28). The Clerk's statement of docket entries under Rule IV was made up on November 15, 1941. (R. 29.) Appeal bond was granted in the sum of $5,000.00 and duly filed on the 9th day of December, 1941. (R. 31-33.) The assignment of errors was duly filed on the 18th day of November, 1941.

The cause in the United States Circuit Court of Appeals for the Fifth Circuit was styled: "Charles Beland versus United States of America," No. 10137.

The Fifth Circuit Court of Appeals based its affirmance of the judgment and sentence of the trial court on the criminal information under Sec. 2557, 26 U. S. C. A. substantially on the following grounds:

(1) That the trial court had the power and

authority to disregard sentencing petitioner *in accordance with the opinion of the Circuit Court.*

(2) That the trial court had the authority and power to sentence petitioner under Section 2557, 26 U.S.C.A.

(3) That the information filed under the provisions of Section 2557, 26 U.S.C.A., and the procedure thereon, was not violative of the Fifth Amendment to the Constitution of the United States.

(4) That petitioner's contentions are without merit insofar as relying upon the ex post facto guaranties under Article 1, Section 9, Clause 3, of the Constitution.

(5) And that "*the statute before us provides for none but future crimes*" and is not *ex post facto* in its operation.

The decision of the Circuit Court of Appeals for the Fifth Circuit was rendered on June 11, 1942. A petition for rehearing was duly filed on June ....., 1942, and an order denying the petition for rehearing was entered by the Circuit Court on or about August 27, 1942. Motion for stay of mandate was duly filed by petitioner, and several days thereafter petitioner's counsel died. Mandate was stayed by order of the Circuit Court from August 27th, 1942, to September 26th, 1942. On September 19th, 1942, petitioner applied to the Circuit Court for an extension of the stay of mandate beyond September 26th, 1942, to permit petitioner to complete this petition and supporting brief by his own efforts, and under the outline set by his recently deceased counsel.

The specification of errors and points relied upon

in the appeal from the Trial Court to the Fifth Circuit Court of Appeals, and herein involved, are as follows:

1.

That the judgment and sentence of the Trial Court herein was and is contrary to law.

2.

That the judgment and sentence of the Trial Court herein was and is contrary to the opinion, and mandate of the United States Circuit Court of Appeals for the Fifth Circuit herein, and said judgment and sentence of the Court did not follow the direction and judgment of said Circuit Court of Appeals.

3.

That the trial court was without jurisdiction to sentence the defendant, in that the mandate from the Supreme Court of the United States has not been issued or filed with the Clerk of this Court.

4.

That the sentence of seven years imprisonment on the charge on which the defendant was convicted, i.e., conspiracy, was and is violative of the laws of and Constitution of the United States and the amendments thereto.

5.

That the sentence imposed was further violative of the constitutional rights of the defendant in that the sentence imposed for the offense involved "was and is an unusual and cruel punishment."

II.

Reasons Relied on for Allowance of the Writ

(1) The decision of the Circuit Court of Appeals herein involves a fundamental question of Federal law, and is an erroneous decision on such an important question of constitutional law, and in conflict with the weight of authority.

(2) The decision of the Circuit Court of Appeals herein involves an important question of Federal Criminal procedure.

(3) The decision of the Circuit Court of Appeals herein is a decision of a Federal question under the Constitution and Statutes of the United States, violative of the constitutional rights of petitioner.

(4) The decision of the Circuit Court of Appeals is a decision in direct conflict with the provisions of the Constitution, under Article 1, Section 9, Clause 3, and the Fifth and Eighth Amendmends thereto.

(5) The decision of the Circuit Court of Appeals herein involves an important question of Federal law, both adjective and substantive, which has not been settled, but should be settled by this Honorable Court.

(6) The decision of the Circuit Court of Appeals herein involves the constitutionality of a so-called "Habitual Criminal Act" under Section 2557, 26 U. S. C. A. which has never before been settled by this Honorable Court, but should be settled by this Honorable Court.

(7) The decision of the Circuit Court of Appeals herein involves legislation discriminatory

in essence and character, and legislation denounced in previous decisions by this Honorable Court.

(8) The decision of the Circuit Court of Appeals is contrary to the Constitution of the United States, and the laws thereunder, and applicable decisions of this Honorable Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript and of the proceedings of the said Circuit Court of Appeals for the Fifth Circuit had in the Case numbered and entitled on its docket No. 10137, "Charles Beland v. United States of America, to the end that this case may be reviewed and determined by this Court as provided for by the statutes and laws of the United States of America; and that the judgment herein of the said United States District Court for the Fort Worth Division of the Northern District of Texas, and the United States Circuit Court of Appeals for the Fifth Circuit affirming the judgment and sentence under the criminal information based on Section 2557, 26 U. S. C. A., on which petitioner was convicted and sentenced, be reversed by this Court and that said petitioner be granted such other and further relief as to this Court may seem proper.

Dated this 21st day of September, 1942.

CHARLES BELAND,
Petitioner Pro Se.

CERTIFICATE OF COUNSEL

I hereby certify that I have carefully examined the record and, in the light of its contents, consider the petition for writ of certiorari well founded, and that it is not interposed for purpose of delay.

CHARLES BELAND,
Petitioner Pro Se.